

REMARKS

The Office Action mailed May 7, 2009 has been reviewed and reconsideration of the above-identified application, as amended, in view of the following remarks, is respectfully requested

Claims 1-7, 9-11 and 13-23 are pending and stand rejected.

Claims 1, 19, 20, 22 and 23 are independent claims.

Claims 1, 19 and 20 have been amended.

Claims 1-7, 9-11 and 13-23 stand rejected under 35 USC 103(a) as being unpatentable over Suzuki (USP no. 6,033,752) in view of Ohno (USP no. 6, 723, 410).

Applicant respectfully disagrees with and respectfully traverses the rejection of the claims. However in order to advance the prosecution of this matter, the independent claims 1, 19 and 20 have been amended to further recite the elements of the distance between the surface of the as-deposited layer, and the surface of any reflecting layer beneath the alloy is adjusted so that interference is obtained between the radiation reflected from the surface of the as-deposited layer and from the surface of the reflective layer beneath the alloy or that the distance is an integer multiple of a quarter wavelength of an electromagnetic radiation. No new matter has been added. Support for the amendment may be found at least on page 9, lines 5-11.

Suzuki discloses an optical recording medium comprising a substrate (2), a first recording layer (3), a second recording layer (4), a protective layer (5), and adhesive layer (6) and an upper plate (7). Suzuki discloses that radiation enters the optical recording medium through the substrate layer (2) which is transparent.

Ohno discloses an optical recording medium that includes a substrate (6), a metallic layer (5), a second protective layer (4), a record layer (3), a second protective layer (20), a semi-transparent layer (1) and a cover (7). Ohno discloses radiation entering the optical recording medium through the cover layer, which is opposite the substrate layer. (See Figure 1).

Ohno further discloses the distinction between the medium illustrated in Figure 1 and Figure 2 wherein "FIG. 1 is called 'film-side-incidence type' [medium] and that

shown in FIG. 2 is called 'substrate-incidence type' [medium]." (see col. 4, lines 66-67).

Hence, Suzuki discloses a substrate-incidence type medium while Figure 1 of Ohno discloses a film-side incidence type medium. As the radiation enters the medium differently between the Suzuki device and the Ohno device, shown in Figure 1, any combination of Suzuki and Ohno, as shown in Figur1, would alter the principle operation of the Suzuki reference as these two different types of medium require different processing to operate.

Assuming that the metallic layer (5) of Ohno could be incorporated into the medium of Suzuki, the metal layer (5) would be incorporated between the first recording layer (3) and the transparent substrate (2). However, in this configuration, the metal layer (5) would prevent radiation, which enters the substrate (2) from reaching the recording layer. Hence, the incorporation of the metal layer of Ohno into the medium of Suzuki would not result in a workable device.

In addition, assuming that the radiation of were to enter the upper plate layer (7) of Suzuki (in a manner similar to that shown in Figure 1 of Ohno), then the metal layer (5) would block the radiation from reaching the guide track (G) that is formed on the surface of the substrate 2 for tracking and address purposes (see Suzuki, col. 4, lines 57-62).

Accordingly, the device resulting from the combination of Suzuki and Ohno would fail to allow for the tracking and addressing of the data on the optical medium.

Hence, adding a metal layer to the substrate-incidence type medium disclosed by Suzuki cannot operate properly using a film side incidence type radiation source, as is asserted by the Office Action.

Notwithstanding the arguments presented above, applicant has amended the independent claims to recite the distance between reflective layers is adjusted to obtain interference between the radiation reflected from the surface of the reflective layer and the surface of the additional layer.

Neither Suzuki nor Ohno provides any teaching regarding adjusting a distance between the reflective layer and the additional layer, as is recited in the claims. Hence, even if the metal layer (5) of Ohno could be incorporated into the device of Suzuki, neither reference provides any motivation or suggestion to adjust the distance between

reflective layers as is recited in the claims.

A claimed invention is *prima facie* obvious when three basic criteria are met.

First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations.

In this case, the combination of Suzuki and Ohno cannot render obvious the subject matter recited in the independent claims, as the device resultant from the combination of Suzuki and Ohno fails to have a reasonable expectation of success and further more the combination of Suzuki and Ohno fails to disclose a material element recited in the claims.

For the above amendments to the claims and the remarks made herein, applicant submits that the rejection of the claims has been overcome and respectfully requests that the rejection be withdrawn and a Notice of Allowance be issued.

With regard to the remaining claims, each of these claims depends from one of the independent claims and, hence, these claims are also not rendered obvious in view of the cited references by virtue of their dependency upon an allowable base claim.

For the amendments made to the claims and for the remarks made herein, applicant submits that the reason for the rejection of the claims has been overcome and respectfully requests that the rejection be withdrawn and a Notice of Allowance be issued.

Applicant denies any statement, position or averment stated in the Office Action that is not specifically addressed by the foregoing. Any rejection and/or point of argument not addressed are moot in view of the presented arguments and no arguments are waived and none of the statements and/or assertions made in the Office Action are conceded.

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney at the telephone given below. No fees are believed necessary for the timely filing of this paper.

Respectfully submitted,

Michael E. Belk, Reg. No. 33,357

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/Carl A. Giordano/

By: Carl A. Giordano
Attorney for Applicant
Registration No. 41,780

Mail all correspondence to:

Michael E. Belk, Esq.
US PHILIPS CORPORATION
P.O. Box 3001
Briarcliff Manor, NY 10510-8001
Phone: (914) 333-9643
Fax: (914) 332-0615